

Neutral Citation Number is 2022/DHC/005044

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 680/2019

AJAI VATAN

..... Petitioner

Through: Petitioner in person.

versus

SASHI ANEJA

..... Respondent

Through: Mr. Vijay Kasana and Mr. Ankit Siwach, Advs.

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Date of Decision: 18th November, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed challenging the order dated 11th March, 2019 whereby the application seeking modification and the judgment and decree dated 28th April, 2017 was dismissed.
2. Vide order dated 28th April, 2017 while deciding the petition under Section 25 of the Guardian and Wards Act, 1983 ("the Act") the learned Family Court *inter alia* held as under;

"15. The sum and substances of above discussion is that the two children are reaching an impressionable age and capable of taking rational and intelligible decision. They have been quite happy with the meeting arrangements and short /temporary custody measures passed by this Court from time to time and

therefore, the petitioner/mother is not entitled to sole custody of the two children and to that extent petition under Section 25 of the Act has no merit. At the same time, the welfare of the children warrants that the interim orders passed by this Court as modified by the Superior Court, may continue, till such time the two children reach the age of maturity. Accordingly while disposing of the present petition under Section 25 of the Act the following directions are passed:-

i). Both the parents shall continue to enjoy visitation/short custody of the children during the school vacations; respondent/father to the extent of 60% of such vocations and petitioner/mother 40% of such vocations every in terms of order dated 30.08.2007 till such time till the time two children attain the age of majority.

ii). Both the parents shall contribute towards the maintenance and education of the children i.e. father and mother in the ration of 2:1 from the time children were admitted in the school i.e. 10.04.2007 till such time the children attain the age of majority; and

III). Since respondent/father has primarily borne the maintenance as well as educational expenses of the children he shall be entitled to get reimbursement of the amount of maintenance to be contributed by the petitioner/wife/mother, subject to adjustment of amount already contributed by the petitioner/mother prior to order dated 05.07.2012 in CM(M) No.779 of 2010 and thereafter further payment made, if any, by the petitioner in terms of the said order i.e. 05.07.2012 @ Rs.6,000/- per month with yearly enhancement of 10% ordered by the Hon'ble Judge of the High Court of Delhi;

iv). The share of the petitioner towards maintenance and education that may be worked out and realized shall be invested

in an Fixed Deposit with any Nationalized Bank in equal amount/share in the name of the two children who shall be at liberty after attaining the age of majority to appropriate the FD as per their share for their personal maintenance as well as further education.”

3. The petitioner herein, sought the modification of the order to the effect that the liability to share the educational expenses of the children be apportioned between him and the non-applicant not in the ratio of 2:1 but in the ratio of 1:2.
4. The plea taken by the petitioner is that the salary of the non-applicant-ex-wife was around Rs.51,000/- per month whereas he was getting a meager pension from Delhi Government @ Rs.35,678/- per month. The petitioner had also taken a plea that the non-applicant-ex-wife was also having a rental income of Rs.9,000/-per month and also have a FD of 15,00,000/-on which she was deriving annual income of Rs.14,000/- per month @ 10% interest on the FD. The petitioner took a plea that on the contrary, he has a meager income from the pension and a small piece of agricultural land in Saharanpur measuring 4½ bigas.
5. Today also, the petitioner who appears in person submits that he was enrolled only in 2013 and prior to that he was merely surviving on the pension for the period of 10th April, 2007 to 31st March, 2013. The petitioner states that a wrong assumption has been drawn that he was practicing during the relevant time. The petitioner further states that the burden of sharing the educational expenses should have been stipulated as 1:2 between him and his ex-wife.
6. In the impugned order, learned Principal Judge, Family Court considered

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the jurisdiction to be exercised under Order 47 CPC and *inter alia* held that the power of review cannot be exercised so as to re-appreciate the evidence.

7. The power of review cannot be converted into power of appeal. The review Court cannot rightly sit as an Appellate Court. The jurisdiction of this Court under Article 227 of the Constitution of India is though wide but has to be exercised in circumspection. The Court can interfere in the order of the learned Trial Court only if there is some manifest illegality or perversity in the order.
8. This Court cannot substitute its opinion with the opinion of the Court which has passed the order. Learned Principal Judge, Family Court has rightly taken a view that the Court exercising the power of review cannot blow/plot itself with the power of entertaining an appeal instead of review. The Court could not have re-assessed or re-appreciated the evidence.
9. In view of the above observations, this court does not find any illegality or perversity in the order of the learned trial court. Hence the present petition is dismissed.

DINESH KUMAR SHARMA, J

NOVEMBER 18, 2022

Pallavi